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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS, LLC,

USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,

USA CAPITAL FIRST TRUST DEED FUND,
LLC,

USA SECURITIES, LLC,

Debtors,

Affects:

- All Debtors
- × USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case
No. BK-S-06-10725-LBR

Judge Linda B. Riegle Presiding

**USACM LIQUIDATING TRUST'S
MOTION TO CLASSIFY CLAIMS FILED
BY PECOS PROFESSIONAL PARK
LIMITED PARTNERSHIP IN PLAN
CLASS A-7, AND RESERVATION OF
COUNTERCLAIMS AND OBJECTIONS**

The USACM Liquidating Trust moves this Court for an order determining that the claims of Pecos Professional Park Limited Partnership ("Pecos") (Claim No. 751-1, as amended by No. 752-2), and the disputed claim listed on the USACM Amended Schedules for Pecos (jointly, the "Claim") is included in Class A-7 as a Subordinated Claim under the confirmed Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), and reserves the right to file counterclaims against Pecos and objections to the Pecos Claim. This objection is explained in the following memorandum and is supported by the Court's record and the declaration of Edward M. Burr filed this date.

I. JURISDICTION

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2 1. The Court has jurisdiction over this objection, motion and reservation of
3 rights pursuant to 28 U.S.C. §§ 1334 and 157. Venue is appropriate under 28 U.S.C.
4 §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

5 2. The statutory predicate for the relief requested herein are 11 U.S.C. §§ 502,
6 510(c), 1142 and Bankruptcy Rule 3007.

II. BACKGROUND

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8 3. On April 13, 2006 (the “Petition Date”), USACM and other debtors filed
9 voluntary petitions for relief under chapter 11 of the Bankruptcy Code. USACM
10 continued to operate its business as a debtor-in-possession pursuant to sections 1107(a)
11 and 1108 of the Bankruptcy Code, under new management by Thomas J. Allison of
12 Mesirow Financial Interim Management, LLC (“Mesirow”), who served as the Chief
13 Restructuring Officer.

14 4. On January 8, 2007, the Court entered an order confirming the Plan [Docket
15 No. 2376].

16 5. Under section I.A. of the Plan, any and all Claims of Non-Debtor Insiders
17 against USACM are “Subordinated Claims.” “Non-Debtor Insiders” is defined to mean
18 any Insider that is not a Debtor, and expressly includes, without limitation, the IP Parties,
19 any Affiliate of the Debtors and the IP Parties, and Insiders of the IP Parties. The “IP
20 Parties” are defined to mean Joseph Milanowski, Thomas Hantges, Paul Hamilton, and
21 USA Investment Partners, LLC (“USAIP”). “Insider” includes any partnership in which
22 the person is a general partner, or corporation of which the person is a director, officer, or
23 person in control. Plan § I.A.; 11 U.S.C. §§ 101(31).

24 6. Pursuant to section II.C.1. of the Plan, all payment to holders of Allowed
25 Subordinated Claims is subordinated to the payment in full, plus interest, of all Allowed
26 Penalty Claims, which in turn are subordinated to the payment in full, plus interest, of all
27 Allowed General Unsecured Claims. The Plan explains that no distribution to holders of
28 Allowed Subordinated Claims is anticipated.

1 **III. APPLICABLE AUTHORITY**

2 12. Pursuant to section 502(a) of the Bankruptcy Code, any claim for which a
3 proof of claim has been filed will be allowed unless a party in interest objects. If a party in
4 interest objects to the proof of claim, the court, after notice and hearing, shall determine
5 the amount of the claim and shall allow the claim except to the extent that the claim is
6 “unenforceable against the debtor . . . under any . . . applicable law for a reason other than
7 because such claim is contingent or unmatured.” 11 U.S.C. § 502(b).

8 13. The USACM Liquidating Trust is entitled to object to proofs of claim under
9 § 502(a) of the Bankruptcy Code, and this filing is timely under the terms of the Plan and
10 related orders. The USACM Liquidating Trust is also entitled to implement the Plan
11 pursuant to Bankruptcy Code § 1142, including by obtaining an order that a particular
12 holder of a claim is a member of a particular class under the Plan.

13 14. A properly filed proof of claim is presumed valid under Bankruptcy Rule
14 3001(f). However, once an objection to the proof of claim controverts the presumption,
15 the creditor ultimately bears the burden of persuasion as to the validity and amount of the
16 claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*,
17 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995), *aff’d*, 91 F.3d 151 (9th Cir. 1996). The ultimate
18 burden of proof as to the validity of a proof of claim “remains at all times upon the
19 claimant.” *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035,
20 1039 (9th Cir. 2000).

21 15. Pecos’ Claim is a Subordinated Claim, and is properly classified as a
22 member of Class A-7, Subordinated Claims against USACM, under the terms of the Plan.
23 Pecos filed no objection to Plan confirmation, and the Plan is effective and binding.

24 16. The USACM Liquidating Trust reserves all counterclaims against Pecos, and
25 further reserves the right to modify, supplement and/or amend this objection and to raise
26 further objections to the Pecos Claim.

IV. CONCLUSION

17. For the reasons set forth above, the USACM Liquidating Trust moves for an order determining that the Pecos Claim is included in Class A-7, Subordinated Claims, under the Plan, and reserving all other objections to the Claim and counterclaims of the USACM Liquidating Trust. The USACM Liquidating Trust also requests such other and further relief as is just and proper.

Dated March 13, 2007.

LEWIS AND ROCA LLP

By /s/ RC (#006593)

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Copy of the foregoing served on March 13, 2007, via email where an email address is listed, and if no email address is listed, then by first class mail, postage paid, addressed to:

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